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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 EVANGELINE G. CANDAZA,

9 Plaintiff(s),

10 v.

11 SUTHERLAND GLOBAL SERVICES, et
12 al.,

13 Defendant(s).

Case No.: 2:19-cv-2152-JAD-NJK

ORDER

(Docket No. 1)

14 Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested
15 authority pursuant to § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted
16 a complaint. Docket No. 1-1.

17 **I. In Forma Pauperis Application**

18 Plaintiff has submitted the affidavit required by § 1915(a). Docket No. 1. Plaintiff has
19 shown an inability to prepay fees and costs or give security for them. Accordingly, the request to
20 proceed *in forma pauperis* will be granted pursuant to § 1915(a). The Clerk's Office is
21 **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's
22 complaint. Docket No. 1-1.

23 **II. Screening Complaint**

24 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
25 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
26 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
27 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
28 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the

1 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
2 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
3 F.3d 1103, 1106 (9th Cir. 1995).

4 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
5 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
6 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
7 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
8 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550
9 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands
10 “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
12 The court must accept as true all well-pled factual allegations in the complaint, but the same
13 requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the
14 elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at 678.
15 When the claims in the complaint have not crossed the line from conceivable to plausible, the
16 complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se* complaint are
17 held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v. Pliler*, 627
18 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings is required
19 after *Twombly* and *Iqbal*).

20 Plaintiff alleges that Defendants demoted her on April 8, 2019. Docket No. 1-1 at 8.
21 Plaintiff alleges that Defendants discriminated against her in violation of Title VII of the Civil
22 Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act of 1967 (ADEA), and
23 the Americans with Disabilities Act of 1990 (ADA). *Id.* at 3. Plaintiff also alleges that Defendants
24 retaliated against her in violation of Title VII. *Id.* The Court will address each claim in turn.

25 **1. Discrimination**

26 **a. Title VII**

27 Plaintiff alleges that Defendants discriminated against her in violation of Title VII based
28 on her race and national origin. *Id.* at 3–4. To state a claim for Title VII discrimination, a plaintiff

1 must allege that (1) she belongs to a protected class; (2) she performed her job satisfactorily; (3)
2 she suffered an adverse employment action; and (4) comparable employees not in her protected
3 class were treated more favorably. *Hawn v. Executive Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th
4 Cir. 2010).

5 Plaintiff alleges that she is Asian and from the Philippines. Docket No. 1-1 at 4. Thus, she
6 satisfies the first element of the above test. *Cf. Lam v. Univ. of Hawai'i*, 40 F.3d 1551, 1561 n.16
7 (9th Cir. 1994), *as amended* (Nov. 21, 1994), *as amended* (Dec. 14, 1994). However, Plaintiff
8 fails to sufficiently allege that she performed her job satisfactorily or that comparable employees
9 not in her protected class were treated more favorably. Although she alleges that she “was one of
10 the top performers in Sales, Metrics, [and] PPC,” she notes that she failed to get her licenses in
11 four states. Docket No. 1-1 at 7. Plaintiff’s allegations leave unclear whether that failure was
12 unsatisfactory in Defendants’ eyes. Plaintiff also fails to allege that comparable employees not in
13 her protected class were treated more favorably. Thus, Plaintiff fails to state a claim for Title VII
14 discrimination.

15 **b. ADEA**

16 Plaintiff alleges that Defendants discriminated against her in violation of the ADEA based
17 on her age. Docket No. 1-1 at 3–4. To state a claim for ADEA discrimination, a plaintiff must
18 allege that she was (1) at least forty years old; (2) performing her job satisfactorily; (3) discharged;
19 and (4) either replaced by a substantially younger employee with equal or inferior qualifications
20 or discharged under circumstances otherwise giving rise to an inference of age discrimination.
21 *Sheppard v. David Evans and Assoc.*, 694 F.3d 1045, 1049 (9th Cir. 2012).

22 Plaintiff alleges that she was at least forty years old. Docket No. 1-1 at 4. However, she
23 fails to allege that she was discharged or that the circumstances otherwise give rise to an inference
24 of age discrimination and, if so, why. In fact, Plaintiff fails to discuss age discrimination at all in
25 the substance of her allegations. Plaintiff’s ADEA claim also suffers from, as noted above, a
26 failure to make clear whether she was performing her job satisfactorily. Thus, Plaintiff fails to
27 state a claim for ADEA discrimination.

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1 **c. ADA**

2 Plaintiff alleges that Defendants discriminated against her in violation of the ADA based
3 on her disability. Docket No. 1-1 at 3, 4, 8. To state a claim for ADA discrimination, a plaintiff
4 must allege that (1) she is disabled under the ADA; (2) she is a qualified individual able to perform
5 the essential functions of the job with reasonable accommodation; and (3) she suffered an adverse
6 employment action because of her disability. *Samper v. Providence St. Vincent Med. Ctr.*, 675
7 F.3d 1233, 1237 (9th Cir. 2012).

8 Plaintiff alleges only that she “[h]ad FMLA intermittent and continuous” and that she was
9 demoted a week after sending her manager an email stating she would “be refiling [her] FMLA
10 that expired in October 2018 due to [her] medical appointments coming up.” Docket No. 1-1 at 4,
11 8. Those allegations address none of the elements of the above test. Thus, Plaintiff fails to state a
12 claim for ADA discrimination.

13 **2. Retaliation Under Title VII**

14 Plaintiff alleges that Defendants retaliated against her in violation of Title VII based on her
15 alleged report and complaint of discrimination. Docket No. 1-1 at 3, 7. To state a claim for Title
16 VII, a plaintiff must allege that (1) she engaged in an activity protected under Title VII; (2) her
17 employer subjected her to an adverse employment action; and (3) a causal link exists between the
18 protected activity and the adverse employment action. *Thomas v. City of Beaverton*, 379 F.3d 802,
19 811 (9th Cir. 2004).

20 Plaintiff’s alleged report and complaint of discrimination to her manager are protected
21 activities under Title VII, and Plaintiff’s allegation that she was demoted qualifies as adverse
22 employment action. *See Ray*, 217 F.3d at 1241, 1243. However, Plaintiff fails to allege any causal
23 link between her report and complaint and her eventual demotion. Thus, Plaintiff fails to state a
24 claim for Title VII retaliation.

25 **III. Conclusion**

26 Accordingly, **IT IS ORDERED** that:

- 27 1. Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not be
28 required to pay the filing fee of four hundred dollars (\$400.00). Plaintiff is permitted

1 to maintain this action to conclusion without the necessity of prepayment of any
2 additional fees or costs or the giving of a security therefor. This order granting leave
3 to proceed *in forma pauperis* shall not extend to the issuance and/or service of
4 subpoenas at government expense.

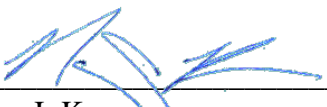
5 2. The Clerk's Office is **INSTRUCTED** to file Plaintiff's complaint, Docket No. 1-1, on
6 the docket.

7 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until **April 24,**
8 **2020**, to file an amended complaint, if she can cure the noted deficiencies. If Plaintiff
9 chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a
10 prior pleading (i.e., the original complaint) in order to make the amended complaint
11 complete. This is because, as a general rule, an amended complaint supersedes the
12 original complaint. Local Rule 15-1(a) requires that an amended complaint be
13 complete in itself without reference to any prior pleading. Once a plaintiff files an
14 amended complaint, the original complaint no longer serves any function in the case.
15 Therefore, in an amended complaint, as in an original complaint, each claim and the
16 involvement of each Defendant must be sufficiently alleged.

17 4. **Failure to comply with this order will result in the recommended dismissal of this**
18 **case.**

19 IT IS SO ORDERED.

20 Dated: March 27, 2020

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23 Nancy J. Koppe
24 United States Magistrate Judge
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